IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CWP No.18979 of 2007
Date of decision: 17.12.2007

Prem Kumar Chauhan.

…Petitioner

Vs.

Punjab State Electricity Board & Others.

…Respondents

CORAM:

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. Gurcharan Singh, Advocate
for the petitioner.

ORDER:

This petition seeks a direction for quashing a part of order dated 5.5.2006, Annexure P-7, to the extent of denial of arrears from 1.7.1988 to 3.5.1992 and for quashing order dated 15.9.2006, Annexure P-9, to the extent of denial of arrears prior to the date of actual joining/officiating on the higher post.

Case of the petitioner is that he joined as Assistant Store Keeper. He was promoted as Store Keeper and then as Head Store Keeper and then as Stock Verifier. He filed a suit for declaration that order dated 4.12.1981, promoting his junior as Head Store Keeper, was not justified. The suit was decreed. As a result of the said decree, seniority list was revised on 8.9.1992. The petitioner was convicted in FIR No.685 under Sections

406/409/120-B IPC, but the conviction was set-aside on appeal. He was also given a chargesheet and was retired from service on 24.3.1999. He got his pension and disciplinary case was quashed by the department on 2.11.2004. He was allowed leave encashment and suspension period was also regularized. DCRC was also released. Adverse remark of 'integrity doubtful' was also expunged. He was given the benefit of advance promotional increment on completion of 23 years of service. On 5.5.2006, he was given promotion from a back date without arrears and on 26.5.2006, his seniority was revised without monetary benefits.

Contention raised on behalf of the petitioner is that promotion having been given from back date and seniority also having been revised from back date, the petitioner was entitled to consequential benefits. Reliance has been placed on judgment of this Court in ***Hamesh Mahajan v. Haryana Vidyut Prasaran Nigam Ltd. and others*** 2004(2) RSJ 329.

We have heard learned counsel for the petitioner.

We do not find any merit in the claim of the petitioner.

It is well-settled that mere retrospective promotion or revision of seniority from back date does not *ipso facto* require consequential benefits to be given. There may be varying situations where arrears may not be given. It also depends on rules.

In ***Union of India v. K.V. Janakiranam*** (1991) 4 SCC 109, it was held that where an employee is completely exonerated and gets promotion under a sealed cover procedure, he was

entitled to consequential benefits of promotion. However, in ***Telecommunication Engineering Services Association and (India) another v. Union of India and another*** 1994 Supp.(2) SCC 222, the said judgment was distinguished and it was held that where due date of promotion on revision of seniority was given as a result of decision of Court and notional promotion was given with retrospective effect, consequential benefits did not automatically follow. In ***Varinder Kumar & ors. v. Avinash Chandra Chadha & ors.*** AIR 1991 SC 958, it was held that where promotion is given on the basis of quota and rota rule and a date of deemed appointment is given from retrospective effect, consequential benefits did not follow. In ***Paluru Ramkrishnaiah and others v. Union of India and another*** AIR 1990 SC 166, it was held that when an employee did not work on promotional basis, he could not claim consequential benefits on getting retrospective date of promotion. The same view was taken by the Hon'ble Supreme Court in ***State of Haryana and others v. O.P. Gupta etc.*** AIR 1996 SC 2936 to the following effect:-

> "6. This Court in Paluru Ramkrishnaiah v. Union of India, (1989) 2 SCR 92 at page 109: (AIR 1990 SC 166 at p.195), considered the direction issued by the High Court and upheld that there has to be "no pay for no work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was

promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in Virender Kumar v. AVinash Chandra Chadha, (1990) 3 SCC 472: (AIR 1991 SC 958), in paragraph 16.

7. It is true, as pointed out by Shri Hooda, that in Union of India v. K. V. Jankiraman, AIR 1991 SC 2010, this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of him, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."

In ***State of Kerala and others v. E.K. Bhaskaran Pillai*** (2007) 6 SCC 524, it was observed that no hard and fast rule could be laid down about denying consequential benefits on the principle of no work no pay. There are exceptions when the Courts have granted monetary benefits also. Where a person is wrongly denied his due, full benefits may be given.

In the present case, revision of seniority or promotion was as a result of implementing a decretal decree granted on

15.6.1985, which could not be implemented on account of various proceedings pending against the petitioner including a criminal case and a chargesheet. Having regard to the circumstances of the case, denial of consequential benefits to the petitioner cannot be held to be arbitrary. The judgment relied upon in ***Hamesh Mahajan*** *(supra)* is distinguishable.

Accordingly, this petition is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

December 17, 2007 **(KANWALJIT SINGH AHLUWALIA)**

ashwani **JUDGE**